FROM COURTROOM TO CLASSROOM:
SPECIAL EDUCATION LAW REALITY CHECK

IASA Summer Con25 Preconference Day

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INTRODUCTION

This presentation will address the latest special education case law and compliance challenges about which every school administrator needs to know! Here are some highlights of what has been going on over the past year or so.[1]

VULNERABILITY OF U.S. DOE REGULATIONS AND OTHER FEDERAL GUIDANCE

Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). On June 28, 2024, the U.S. Supreme Court issued a 6-3 opinion that will likely have great impact on the world of special education law and the applicability of regulations under IDEA, Section 504, and the ADA (and other interpretive guidance potentially). In this case, a group of commercial fishermen participating in the Atlantic herring fishery sued the National Marine Fisheries Service based upon the Service's promulgation of a rule that required the industry to fund at-sea monitoring programs at approximately $710 per day. The fishermen argued that the applicable statute did not authorize the Service to create these requirements and that the Service failed to follow proper rulemaking procedures. The federal district court ruled (and the D.C. Circuit affirmed) that the Service's rule was a reasonable interpretation of its authority and that it was adopted appropriately. The questions presented to the Supreme Court were: 1) whether the applicable statute (the Magnuson-Stevens Act) authorized the Service to promulgate the rule that it did; and 2) whether the Court should overrule the 1984 case of Chevron v. Natural Resources Council (and the "Chevron doctrine" created by the case) or at least clarify

[1] **Important Disclaimers:** The information that I will provide today is intended as general information only and the opinions and interpretations are those of only one special education school attorney. You must consult with your agency's school attorney on specific, local matters and for legal advice. In addition, this information must be analyzed in light of your State Department of Education's (and/or your local district's) guidance on all things related to the provision of educational services to students with disabilities.

whether statutory silence on controversial powers creates an ambiguity requiring deference to the federal agency. The Loper Bright Court ruled that the Administrative Procedure Act requires courts to exercise "independent judgment" in deciding whether an agency has acted within its statutory authority and that courts may not defer to an agency interpretation of the law simply because a statute is ambiguous. Where Chevron required courts to defer to agency interpretations of ambiguous statutes if those interpretations were reasonable, Chevron was based upon a flawed assumption that Congress intends to delegate interpretive authority to agencies when the law is ambiguous. This assumption does not reflect reality and goes against the traditional role of courts, has been difficult to apply, and has led to confusion in lower courts. Bottom line: It is up to the courts "to decide whether the law means what the agency says." Courts, not agencies, will decide all relevant questions of law arising on review of agency action, even those involving ambiguous laws.

Note 1: Currently, there is an OCR administrative federal fund termination hearing pending before the U.S. Department of Education against the Michigan Department of Education (MDE) regarding an OCR finding that MDE violated Section 504 when it gave incorrect guidance to school districts as to their obligations related to compensatory services to students for services missed during COVID school closures. The Michigan Attorney General's response brief and motion to dismiss the action states that "Loper casts a long shadow on all of the precedents cited by OCR in its brief and removes any deference this Tribunal should afford to OCR's interpretation of Section 504" and that "OCR is still operating in a pre-Loper world." In addition, MDE argues that Section 504 contains no requirement that it has a responsibility under Section 504 to ensure that its districts were compliant with the law and that OCR has no jurisdiction to enforce IDEA.

Note 2: On February 19, 2025, the President issued Executive Order 14219 (Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative). The Order directs the heads of all executive departments and agencies to identify certain categories of unlawful and potentially unlawful regulations within 60 days and begin plans to repeal them (i.e., until April 20, 2025).

On April 9, 2025, the President issued a Presidential Memorandum indicating that the "review-and-repeal" effort "shall prioritize, in particular, evaluating each existing regulation's lawfulness under 10 Supreme Court decisions, including and listing as number one, the Loper Bright decision that was decided in June 2024. Notably, the Memo notes that—

> in effectuating repeals of facially unlawful regulations, agency heads shall finalize rules without notice and comment, where doing so is consistent with the "good cause" exception in the Administrative Procedure Act. That exception allows agencies to dispense with notice-and-comment rulemaking when that process would be "impracticable, unnecessary, or contrary to the public interest." Retaining and enforcing facially unlawful regulations is clearly contrary to the public interest. Furthermore, notice-and-comment proceedings are "unnecessary" where repeal is required as a matter of law to ensure consistency with a ruling of the United States Supreme Court. Agencies thus have ample cause and the legal authority to immediately repeal unlawful regulations.

The Memo concludes with direction to the heads of agencies and departments that following the 60-day review period, agencies shall immediately take steps to effectuate repeal of any regulation, or the portion of any regulation, that clearly exceeds the agency's statutory authority or is otherwise

unlawful and accompany each with a brief statement of the reasons that the "good cause" exception applies.

To date, while I have read that other agency regulations have been repealed (and there are challenges to some), I have seen no reporting from the US DOE that any IDEA or Section 504 regulations have been declared unlawful or are recommended for repeal, and the 60-day review period is obviously over at this time.

UPDATES ON THE STATUS OF US DOE, IDEA, AND SECTION 504

Dismantling the US DOE Generally

As to the future of the U.S. Department of Education (US DOE), the President signed an Executive Order on March 20, 2025 "closing the Department of Education and returning authority to the states" to the "maximum extent appropriate and permitted by law." While it is a simple fact that the President cannot completely close the US DOE without an Act of Congress, the current Administration is definitely working on the "dismantling" and much has happened, including litigation to prevent and, in some cases, reverse what has been done.

State of New York v. McMahon, Case No. 1:25-CV-10601 (D. Mass.) filed on March 13, 2025, consolidated with Somerville Pub. Schs. v. Trump, Case No. 1:25-CV-10677 (D. Mass.), originally filed on March 24, 2025. In these consolidated cases, 20 states and the District of Columbia (NY, MA, CA, AZ, CO, CT, DE, HI, IL, ME, MD, MI, MN, NJ, NV, OR, RI, VT, WA, WI) as well as educators, school districts, and teachers' unions seek injunctive relief to prevent the dismantling of the US DOE and a declaration that the President's directive is unconstitutional and violates the law.

On May 22, 2025, the federal district court granted a preliminary injunction keeping the Administration from implementing the reduction in force announced on March 11 and the dismantling of the US DOE as ordered in the President's Executive Order of March 20, 2025. The district court also ordered the US DOE to reinstate nearly 1,400 US DOE employees who were fired as part of the RIF.

- On May 23, 2025, the Administration filed a Notice of Appeal with the First Circuit and also asked for a stay of the district court's injunction, which was denied by the First Circuit on June 4, 2025. Somerville Pub. Schs. v. McMahon, 2025 WL 1576570 (1st Cir. 2025).

- On June 6, 2025, the Administration filed an application with the U.S. Supreme Court to stay the injunction while the case is pending before the First Circuit, calling the lower court's order "unlawful" and stating that the injunction "causes irreparable harm to the Executive Branch."

- On June 14, 2025, the Supreme Court granted the Administration's request to pause the reinstatement Order while the First Circuit appeal is pending. McMahon v. New York, Case No. 24A1203, 606 U.S. ___, 2025 WL 1922626 (2025). In Southern terms: "It ain't over yet." The First Circuit must now hear and make a decision on the Administration's appeal of the Massachusetts Judge's opinion. While that Appeal is ongoing, however, the Supreme Court's ruling has put the Order to reinstate employees on pause. It is now time to watch

what the First Circuit does with the case. It is also important to remember that the Administration still cannot shut down the U.S. Department of Education without a literal "Act of Congress." Many believe that Congressional support necessary to get that done will not be there while others think it will.

Dismantling of the Office for Civil Rights (OCR) Specifically

As everyone is likely aware by now, as part of "dismantling" the US DOE, the administration in March 2025 eliminated seven of the twelve US DOE OCR regional offices across the country (Boston, New York City, Philadelphia, Chicago, Cleveland, San Francisco, and Dallas). Reportedly, more than 200 OCR employees were also laid off as part of US DOE's overall reduction in force (RIF). There are pending court cases challenging the administration's actions for various reasons, but it is still unknown what will happen ultimately, as the cases continue to travel through the courts as discussed below.

It is important to note that while it is not known how the reduction in OCR's offices and workforce may impact on investigations of student disability discrimination complaints long term, it is contemplated that parents and their advocates and/or attorneys may turn to alternative forms of complaint, such as filing for more due process hearings under Section 504 and IDEA, filing more formal grievances, or filing more cases in court to address disability discrimination claims.[2]

As of now, below is a status report on the important cases impacting OCR's status and resolution of complaints filed with OCR:

Carter v. U.S. Dept. of Educ., Case No. 1:25-CV-00744 (D. D.C.) filed on March 14, 2025. Last Quarter, we also discussed this case filed by students and their parents who have complaints pending with OCR, as well as the Southern Poverty Law Center (SPLC), National Center for Youth Law (NCYL), and the Council of Parent Attorneys and Advocates (COPAA) seeking declaratory and injunctive relief and alleging that the US DOE's action (pausing complaint processing and closing 7 of the 12 OCR regional offices) significantly reduces OCR's ability to investigate civil rights complaints—if not altogether preventing OCR from doing so—and significantly harms students who are facing discrimination in school and their parents.

- On May 21, 2025, the federal district court denied the parents' requested preliminary injunction. https://www.courtlistener.com/docket/69737108/67/carter-v-united-states-department-of-education/

- On May 30, 2025, the parties agreed to watch the State of New York/Somerville case noted above and confer on next steps in the case.

[2] In an article published on May 19, 2025, K-12 Dive notes that the National Center for Youth Law (NCYL) is expected to launch a Public Education Defense Fund which will contract with former OCR attorneys and "fill the gap" left by the dismantling of the US DOE. https://www.k12dive.com/news/legal-defense-fund-ocr-case-load-RIF-trump-layoffs/748372/.

Victims Rights Law Center v. U.S. Dept. of Educ., Case No. 1:25-CV-11042 (D. Mass.) filed on April 21, 2025. This case brought by a nonprofit organization that represents students in discrimination matters, along with students and parents, also challenges the termination of OCR staff and the closure of the regional OCR offices in March. They seek the same declaratory and injunctive relief as in the New York v. McMahon case discussed above, and oral argument was had on the motion for preliminary injunction against the government on June 5, 2025.

- On June 18, 2025, the same federal Judge in the State of New York v. McMahon case discussed above issued a preliminary injunction requiring the US DOE to reinstate all employees terminated at OCR during the RIF announced on March 11, 2025 and to immediately notify former OCR employees and other officials of the reinstatement order within 24 hours. The court stated the purpose of the order is "to restore the OCR to the status quo such that it is able to carry out its statutory functions." The court noted that since March 11 and the RIF, the government "had frozen nearly all investigations except for a select few high-profile investigations regarding diversity, equity and inclusion programs that Defendants allege discriminate against white and Asian students" and that OCR had not "announced any investigations or resolutions of complaints based on (1) disability discrimination; (2) sex discrimination, besides those based on policies or practices that permit transgender students to access school facilities and activities; or (3) race discrimination against Black, Latino or Indigenous students." The court also noted that OCR had instructed staff to "not communicate with students, families, and schools involved in their cases and to cancel scheduled meetings and mediations." Staff were also told not to use typical investigation processes—document requests, interviews, negotiation of resolution agreements, etc. The court concluded, based upon all of the evidence presented, that it was "making it impossible for OCR to complete investigations and cases promptly and fairly." While the case is similar to the others discussed above, the Judge added that this case "warrants a separate decision to address the unique harms [Plaintiffs] are suffering." Victim Rights Law Center v. U.S. Dept. of Educ., ___ F.Supp.3d ___, 2025 WL 1704311 (D. Mass. 2025).

- On June 23, 2025, the US DOE submitted a Declaration (as its weekly report to the Judge as ordered) to report that affected employees were notified of the court's order as instructed. https://www.courtlistener.com/docket/69921190/41/victim-rights-law-center-v-united-states-department-of-education/ and has continued to file them.
  Note: Apparently, the government plans to appeal this ruling.

- On July 21, 2025, the Administration filed a Motion to Vacate the Judge's injunction based upon the ruling in McMahon v. New York by the Supreme Court on July 14th referenced above.

- **Pending OCR Complaints**

While we do not know what the ultimate outcomes will be in the above-referenced cases, what we do know is that for years there has been and continues to be a backlog in the resolution of OCR complaints, including those filed alleging disability discrimination under Section 504/ADA.

- **OCR Complaints filed prior to January 14, 2025**

Although the US DOE's website has changed a good bit, its page entitled "Pending Cases Currently Under Investigation at Elementary-Secondary and Post-Secondary Schools" remains active and reflects the number of pending complaints currently before OCR: https://ocrcas.ed.gov/open-investigations. While the website indicates that the list of pending complaints is updated "every Tuesday," it has not been updated since January 14, 2025 and currently reflects that there is a total of 12,079 OCR complaints pending as of that date against elementary, secondary, and/or post-secondary schools.

I have been unable to find any updated data on how many complaints have been filed with OCR after January 14, 2025 and are pending currently before OCR as of today. Of the pending OCR complaints noted on the website, however, 5,823 of them relate to "disability discrimination" and most of those are against public school districts. Of those, 1,899 are about "FAPE;" 963 involve retaliation; 598 involve disability harassment, 189 involve discipline; 172 involve restraint/seclusion; 76 involve "effective communication;" 34 involve service animals; and the remainder involve miscellaneous topics, such as accessibility, "denial of benefits," and procedural requirements.

Apparently, OCR has been pretty active getting complaints resolved. There is now information available regarding activity on pending complaints on OCR's website at https://ocrcas.ed.gov/ocr-search. The webpage is called "Office for Civil Rights Recent Resolution Search" where recently resolved complaints may be found, including those against elementary and secondary schools in the area of disability discrimination and other areas.

- **OCR Complaints filed after January 14, 2025**

Certainly, there has been news of OCR's opening of complaint investigations since January of 2025, but most appear to be "directed investigations" initiated by OCR rather than filed by a student representative and do not involve disability discrimination. However, with respect to student disability discrimination, OCR has announced that it has opened two complaints for investigation so far this year.

- **Green Bay Area Public School District**

On the US DOE's website, it is reported that on May 28, 2025, OCR opened a Title VI and disability discrimination investigation into Green Bay Area Public School District based upon a complaint filed by the Wisconsin Institute for Law & Liberty (WILL). The complaint alleges discrimination against an elementary school student with dyslexia based upon race and disability. It complains that the school district prioritizes special education services to students based upon racial "priority groups," a category that the student did not fall into because he is white. Further, it claims that the district discriminated against the student on the basis of disability and failed to provide timely and adequate special education services when his mother repeatedly petitioned the school over several months to provide her son with needed reading intervention for his dyslexia. It is also claimed that the school principal reportedly told the parent that he felt an obligation to serve priority racial groups that have been traditionally underperforming. The district also allegedly keeps a spreadsheet that is color-coded by race to ensure that racial priority groups are receiving services first.

See, US DOE Press Release at https://www.ed.gov/about/news/press-release/us-department-of-educations-office-civil-rights-opens-title-vi-and-disability-discrimination-investigation-green-bay-area-public-school-district.

- **District of Columbia Public Schools**

On March 5, 2025, OCR opened a directed investigation of the District of Columbia Public Schools by sending a letter to their Chancellor. https://www.ed.gov/media/document/dcps-investigation-letter-ocr-march-2025-109535.pdf. According to the letter, OCR initiated the investigation based upon a December 2024 Report of the D.C. Advisory Committee to the U.S. Commission on Civil Rights indicating that "data shows that the District of Columbia has historically received significantly more complaints per 10,000 students in the special education area...than any other state or territory in the United States." The report also found that the District's "dispute resolution system places the burden of accessing special education services on students and their families," and the "high rate of due process complaints warrants serious attention to explore why families are suing for services that they are entitled to." Additionally, it is noted that the Report states that the District's current transportation system for special education students poses significant burdens, including long delays, unreliable schedules, and lax oversight.

OCR clarifies that its directed investigation will examine whether the District is failing to evaluate or reevaluate, in an individualized manner, students who need or are believed to need appropriate special education or related services, in violation of Section 504 and Title II, and whether this failure results in parents/guardians having to rely on due process complaints to receive appropriate special education or related services to which their children are entitled. OCR will also investigate whether the District's current transportation system results in a denial of a free and appropriate education for students with disabilities.

Section 504 Unconstitutional?

Texas v. Kennedy, Case No. 5:24-cv-225-H (formerly Texas v. Becerra), filed September 26, 2024 in the U.S. District Court for the Northern District of Texas. In mid-February, this case received a great deal of attention on social media (and otherwise) due to the relief requested by 17 states (TX, AK, AL, ARK, FL, GA, IND, IOWA, KS, LA, MO, MT, NEB, SC, SD, UT and WV) that Section 504 be declared unconstitutional (page 42 of the Complaint), as well as its allegations in Count 3 that "Section 504 is Unconstitutional" (page 37 of the Complaint). Needless to say, the States' Attorneys General and Governors were inundated with questions, concerns, and requests to withdraw. Note: The case is not a special education case and, in essence, challenges the U.S. Department of Health and Human Services' "new rule" finalized in May 2024 that added "gender dysphoria" potentially to the definition of disability under 504 and ADA.

- On February 19, 2025, the parties filed a Joint Status Report asking the Court noting that the "defendants continue to evaluate their position in light of the President's recent Executive Order" and "ask the Court not to disturb the current stay of briefing deadlines." Importantly, the Status Report also noted that the "Plaintiffs clarify that they have never moved—and do not plan to move—the Court to declare or enjoin Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, as unconstitutional on its face. Plaintiffs have not sought and do not seek to enjoin the disbursement of funds from the Department on the basis that the statute is

unconstitutional." The Court agreed and ordered the parties to file another Joint Status Report no later than April 21, 2025.

- On April 11, 2025, the Joint Status Report was filed indicating that HHS is continuing to evaluate its position and asking the Court to continue the stay. Further clarification was added by the States that they have no intention to seek any declaration that "Section 504 is unconstitutional."

- On April 21, 2025, the Court issued an Order continuing the stay and requested another Joint Status Report no later than July 21, 2025.

If interested, the pleadings in the case can be monitored at:
https://www.courtlistener.com/docket/69200578/state-of-texas-v-becerra/

Note: Also on April 11, 2025, HHS published a new document in the Federal Register (90 Fed. Reg. 15412) to clarify that the challenged language in the preamble of the HHS rule concerning gender dysphoria (the one at issue in the above case) is not contained in regulatory text and "does not have the force or effect of law. Therefore, it cannot be enforced."
https://www.federalregister.gov/documents/2025/04/11/2025-06127/nondiscrimination-on-the-basis-of-disability-in-programs-or-activities-receiving-federal-financial?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov

THE LEGAL STANDARD FOR OBTAINING MONEY DAMAGES IN SPECIAL EDUCATION CASES

A.J.T. v. Osseo Area Schs., 605 U.S. ___, 146 S.Ct. 1816 (2025). The decision can be found at https://www.supremecourt.gov/opinions/24pdf/24-249_a86c.pdf.

Federal court case history: There were essentially two important case decisions going on in 2024 that led to the Supreme Court's decision on June 12, 2025—One regarding the provision of FAPE to the student and one involving the parents' claims against the Minnesota district for money damages and injunctive relief under Section 504/ADA for its denial of FAPE.

Case Decision #1: The FAPE Case

The federal district court's review of the IDEA due process hearing decision on FAPE

The A.J.T. case began in federal court when the school district sought court review of a due process hearing decision finding that the district denied FAPE to a young lady named Ava Tharpe with a rare and severe form of epilepsy—Lennox-Gastaut Syndrome. The Administrative Law Judge (ALJ) ordered the district to provide instruction to Ava at school from noon to 4:15 and then services at home to include discrete trial training interventions between 4:30 pm and 6:00 pm each school day, along with 495 hours of compensatory education services. Because Ava's seizure activity kept her from attending school until after noon each day, the ALJ found that the district's proposal to end Ava's day at 3 p.m. because the middle school's day ended at 2:40 p.m. was not FAPE designed to enable Ava to make appropriate progress in light of her circumstances.

In 2022, the federal district court affirmed the hearing decision, noting that during a shortened school day, the evidence reflected that Ava made *de minimis* progress. In addition, the court noted that the district categorically refused to extend her school day based upon administrative convenience and availability of personnel rather than upon Ava's individual needs, which is "never an excuse for impermissibly shortening the instructional time that students with disabilities receive." Osseo Area Schs. v. A.J.T., 81 IDELR 256 (D. Minn. 2022).

The district appealed this ruling to the Eighth Circuit Court of Appeals.

The Eighth Circuit Court of Appeals' decision on the district court's FAPE ruling

The Eighth Circuit affirmed the district court's decision that the district denied FAPE to Ava. As an initial matter, the court rejected "the notion that the IDEA's reach is limited to the regular hours of the school day. Neither the District nor *amici* identify anything in the IDEA implying—let alone stating—that a school district is only obligated to provide a FAPE if it can do so between the bells."

Turning to Ava's IEPs and whether she received FAPE, the court pointed to several things that convinced it that she did not. First, Ava made *de minimis* progress overall. She regressed in toileting and, at one point, the court noted that the district removed the toileting goal from her IEP because there was not enough time to work on it during her short school day and noted that the district's records clearly reflected that. In addition, the court noted that the district cited only slight progress in a few areas and one of the district's experts agreed that the student's progress was minimal. Progress reports reflected that Ava met none of her annual goals in 2016 or 2017 and, by the end of 2018, she had met only a few short-term objectives. Finally, the court pointed out that the record contained no progress reports for 2019.

The Eighth Circuit also rejected an additional argument made by the district that the district court erred when it considered expert testimony that Ava would have benefited from evening instruction because it imposed a requirement to "maximize the student's potential." The Court noted that asking whether Ava would have made more progress with evening instruction is not about maximizing potential— "it's about whether the District's purely administrative decision not to provide evening education caused her *de minimis* progress and regression." The Court concluded that the expert testimony showed that the district's choice to prioritize its administrative concerns (such as creating an unfavorable precedent for itself and other districts, state law does not require it, etc.) had a negative impact on Ava's learning. Considering that Ava made *de minimis* progress overall, that she regressed in toileting, and that she would have made more progress with evening instruction, the Court saw no error in the district court's conclusion that the district denied FAPE. Osseo Area Schs. v. A.J.T., 96 F.4th 1062, 124 LRP 9021 (8th Cir. 2024). The district did not seek review of this decision.

One more A.J.T. FAPE decision: On March 25, 2025, the district court awarded the parents attorneys' fees as the prevailing party under IDEA on the FAPE case, even though the district argued that the parents' request for fees was filed too late. The Court found that in the IDEA context, a party who is successful in the district court need not file a motion for attorneys' fees until after the Eighth Circuit has rendered its decision and then only before the applicable statutory time for filing an appeal from an IDEA decision has expired. The Court also found that no filing timeline applies to an IDEA claim for prevailing party attorneys' fees until the determination of the prevailing party is final.

Although the parents waited almost two years to file for fees after the district court's judgment and never requested an extension, they requested fees within 90 days of the 8th Circuit's decision. Any late filing was the result of excusable neglect based upon, among other things, the district's bad faith in negotiating fees for almost 90 days, resulting in a settlement on fees and then a refusal on the part of the district to sign an agreement. The Court ordered the district to pay attorneys' fees and costs in the following amounts within one week of signing the Order: $174,617.56 in fees for work done at the administrative and district court level; $60,185.16 for unpaid fees and costs the 8th Circuit awarded A.J.T. on May 30, 2024; and daily interest at the rate of .0122% on $60,185.16 from May 30, 2024 until the date of payment. Osseo Area Schs. v. A.J.T., 125 LRP 8960 (D. Minn. 2025).

Case Decision #2: The Money Damages Case

The federal district court's decision on the parents' claims for additional relief under 504/ADA for money damages

Before the same federal district court, the parents sought relief in addition to what they received in the IDEA hearing in the form of compensatory money damages under Section 504 and the ADA. The district court, however, granted the district's motion for judgment on these claims, finding that district officials exercised professional judgment in a way that did not depart grossly from accepted standards among educational professionals, especially because they had convened multiple IEP meetings, extended Ava's school day beyond the school day of her peers, incorporated many of the parent's expert suggestions into Ava's IEPs, and ensured that Ava always had at least one and often two aides with her at school. Finding that the parents had failed to show that the district acted "with bad faith or gross misjudgment" required in the Eighth Circuit to make a case under ADA/504, the court dismissed the claims for compensatory money damages. A.J.T. v. Osseo Area Schs., 82 IDELR 158 (D. Minn. 2023).

The parents appealed this ruling to the Eighth Circuit Court of Appeals.

The Eighth Circuit Court of Appeals' decision on the 504/ADA claims for money damages

The Eighth Circuit also affirmed this decision of the district court, but did so with language that appeared reflect regret. The Court held that while the district may have improperly refused to provide Ava with instruction after school hours to accommodate her epilepsy and seizure disorder, its actions did not constitute intentional discrimination required to substantiate a 504/ADA claim for disability discrimination in the Eighth Circuit.

The Court noted further that in order to successfully assert a federal claim under 504/ADA for money damages in the Eighth Circuit, parents must prove that the district intentionally discriminated by acting "with bad faith or gross misjudgment." Here, the Court noted that the parents did not meet this standard and while the district's denial of the parents' request for extended day services for Ava may have violated her educational rights and amounted to "negligence or deliberate indifference," this was not enough under Eighth Circuit authority.

The Court noted that the district did not ignore Ava's needs nor did it delay efforts to address them. Rather, the district appropriately met with the parents and updated her IEP every school year, which included a variety of services, including intensive one-on-one instruction and a 15-minute extension of the school day so that the halls could clear of other students before she left school. Further, the district offered the student 16 three-hour instructional sessions at home each summer. This does not show wrongful intent for purposes of disability discrimination in the Eighth Circuit. A.J.T. v. Osseo Area Schs., 124 LRP 9023 (8th Cir. 2024).

The parents asked the Supreme Court to review the decision and their petition was granted on January 17, 2025.

The specific question presented to the Supreme Court

When reviewing the decision of the Supreme Court issued on June 12, 2025, it is important to note the specific (and narrow) question the Court was asked to address:

> Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Rehabilitation Act) require public entities and organizations that receive federal funding to provide reasonable accommodations for people with disabilities. In the decision below, the Eighth Circuit held that, for discrimination claims "based on educational services" brought by children with disabilities, these statutes are violated only if school officials acted with "bad faith or gross misjudgment." App.3a. That test squarely implicates an entrenched and acknowledged 5-2 circuit split over the standard governing such claims. It is also plainly mistaken on the merits: As the Eighth Circuit itself acknowledged, the test lacks "any anchor in statutory text," App.5a n.2, and it arbitrarily departs from the more lenient standards that all courts-including the Eighth Circuit-apply to ADA and Rehabilitation Act claims brought by plaintiffs outside the school setting. The question presented is: **Whether the ADA and Rehabilitation Act require children with disabilities to satisfy a uniquely stringent "bad faith or gross misjudgment" standard when seeking relief for discrimination relating to their education.**

The Supreme Court's answer to the question presented

The Supreme Court's short and unanimous answer to the above question is "No." The longer answer is that students bringing ADA and 504 claims related to their education are not required to make a heightened showing of "bad faith or gross misjudgment," but instead are subject to the same standards that apply in other disability discrimination cases.

The Court pointed out that in cases outside the context of elementary and secondary education, the general approach of the courts of appeals, including the Eighth Circuit, permits plaintiffs to establish a statutory violation and obtain injunctive relief under the ADA and Section 504 without proving intent to discriminate. To obtain compensatory damages, however, courts of appeals generally agree that a plaintiff must show intentional discrimination and "a majority" of those courts that have weighed in on the question, including the Eighth Circuit, find the requirement to show "intentional discrimination" satisfied by proof that the defendant acted with "deliberate indifference." That standard "does not require a showing of personal ill will or animosity toward the disabled person."

[citations omitted]. Rather, to show deliberate indifference, it is enough that a plaintiff prove the defendant disregarded a "strong likelihood" that the challenged action would "result in a violation of federally protected rights." [citations omitted].

The Court held specifically that ADA and 504 claims based on educational services should be subject to the same standards that apply in other disability discrimination contexts as described, without saying "deliberate indifference" is the chosen or right one directly. The Court also noted that there is nothing in the text of ADA or Section 504 that such claims should be subject to a distinct, more demanding analysis, such as "bad faith or gross misjudgment."

Finally, the Court ended its ruling by saying:

> That our decision is narrow does not diminish its import for A. J. T. and "a great many children with disabilities and their parents." [citation omitted]. Together they face daunting challenges on a daily basis. We hold today that those challenges do not include having to satisfy a more stringent standard of proof than other plaintiffs to establish discrimination under Title II of the ADA and Section 504 of the Rehabilitation Act. The judgment of the United States Court of Appeals for the Eighth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

Important Note: In Idaho, this case does not change Ninth Circuit Court of Appeals' authority that already required intentional discrimination in the form of "deliberate indifference" to be shown on the part of schools in order for parents to recover money damages in special education cases.

My impressions of the Supreme Court's ruling

What the Court did not Say

1. That Ava or her parents are entitled to money damages and that the parents proved a violation of 504/ADA;
2. That schools are required to accommodate and make school day modifications upon request of every parent of a student with a disability;
3. That it is now easier for parents to recover money damages for violations of IDEA by using 504/ADA as a "gateway" to litigation;
4. That "deliberate indifference" is the definitive standard for recovering money damages under 504/ADA in a FAPE-related case; or
5. That intentional discrimination is not required in order to recover money damages under 504/ADA.

My final thought: Also unsettled is whether 504 was violated in the first place when IDEA FAPE was denied in not providing an extended day to Ava. While the lower courts ruled that IDEA was violated based on the failure to consider Ava's individual needs in programming for her, was it a denial of a reasonable accommodation under 504? Or might modification to the school day be a fundamental alteration required under IDEA but not a reasonable accommodation under Section 504? The Court made clear in footnote 6 that "[b]ecause we address only the application of the heightened bad faith or gross misjudgment standard of intent to education related ADA and Rehabilitation Act

claims, our opinion should not be read to speak to any other showing that a plaintiff must make in order to prove a violation of the respective requirements of those statutes or the IDEA." It will be interesting to see what happens in this case upon remand for further proceedings.

"EFFECTIVE COMMUNICATION" UNDER ADA

LePape v. Lower Merion Sch. Dist., 103 F.4th 966, 124 LRP 17149 (3d Cir. 2024). While the district did not deny FAPE under IDEA to the former student with autism, it may have discriminated under the ADA when it refused to use Spelling to Communicate (S2C) with the nonverbal student (a communication technique wherein a non-speaker points at letters on a laminated alphabet board (letter board) held by a communication support person)) and have a person trained in S2C to work with the student at school every day. Under the ADA's "effective communication" requirements, a district must ensure that its communication with a student with a disability is as effective as its communication with nondisabled students. In doing so, a district is required to give "primary consideration" to the requests of the student, unless it can demonstrate that another effective means of communication exists. Here, there is a question of fact as to whether the district has denied the student "effective communication," and the district court erred in determining that the parents' prior FAPE claims incorporated and precluded their claims under ADA. Under IDEA, a district is not required to implement parent preferences in methodology as long as the student receives educational benefit. However, under ADA, its requirements impose a greater obligation than IDEA's FAPE requirement. Thus, the district court's granting of summary judgment on all claims is reversed and the ADA and 504 claims are remanded. In addition and under ADA/504, the parents' claims for compensatory damages should be addressed, even if they are based on the same facts as the FAPE-related claim. While the Court need not decide now whether S2C is effective communication:

> There is ample evidence from which a reasonable jury could conclude that the School District violated the ADA's effective communication requirement by denying Alex his preferred method of communication without providing an effective alternative. He testified that the letter board is effective for him and remains his preferred communication method. He is a non-speaker who for the first 16 years of his life had "very minimal communication," was able to say only a few words, and was unable to communicate clearly and as he wished. [citation omitted]. By typing, he could transcribe the speech of others but could not communicate his own thoughts. For example, he could not communicate with the school nurse or the guidance counselor about his college plans, course selection, testing, and accommodations; nor could he participate in class, extracurricular activities, or community-based instruction. In addition to Alex's own testimony, seven treating clinicians and Dr. Barry Prizant--a speech pathologist and psycholinguist who has been awarded ASHA's highest honors, has practiced for nearly 50 years, and reviewed approximately 185 minutes of Alex communicating with the letter board and interviewed him--testified that the letter board is effective communication for him. And Alex's treating psychiatrist, Dr. Manley Ghaffari, who is board-certified in child and adolescent psychiatry and focuses her practice on neurodiverse patients, testified that the letter board was 'extremely effective in allowing [Alex] to express his thoughts and feelings.' [citation omitted]. Meanwhile, Vanessa von Hagen, a board-certified behavior analyst and the lead clinician on Alex's home team for several years, testified that he cannot orally communicate in sentences and can only type what he hears, not his own thoughts. She

> also testified that the letter board was effective communication for Alex. Indeed, as the School District's initial denial of the letter board turned almost exclusively on its concerns about the auxiliary aid's efficacy, that was the most material fact at issue."

Thus, summary judgment was improper on the "effective communication" issue under ADA/504 and the issue of discrimination and damages under ADA must be decided by a jury.

EXHAUSTION OF ADMINISTRATIVE REMEDIES PRIOR TO 504/ADA CLAIMS IN COURT

Hawai'i Disability Rights Center v. Kishimoto, 122 F.4th 353, 124 LRP 40099 (9th Cir. 2024). The district court's granting of summary judgment in favor of the Hawai'i Department of Education and Department of Human Services is affirmed in part and reversed in part regarding allegations of unlawful denial of access to certain ABA services during the school day. Here, the Hawai'i Disability Rights Center (HDRC) has the authority under the Developmentally Disabled Assistance and Bill of Rights Act to bring this case for injunctive and declaratory relief as part of its statutory obligations under the DD Act to protect the rights of individuals with developmental disabilities. However, HDRC must first exhaust FAPE claims under IDEA, but individual parents are not required to independently do so. With respect to its non-IDEA claims under ADA, Section 504, and the Medicaid Act, HDRC is not required to exhaust IDEA's administrative remedies where their claim is that the Departments are unlawfully denying students with autism access to ABA during the school day—even when those services are medically necessary—unless the DOE independently determines that ABA is required for educational purposes and then provides DOE-approved personnel for that purpose. In other words, a student with autism who has been medically prescribed ABA services will not receive those services during the school day and DOE's policy does not ensure that ABA or ABA-like services in school are provided by licensed providers. In short, DOE's policy is that only DOE may provide ABA (or ABA-like) services during school hours and only after a determination that the services are educationally relevant because they enable participation and progress of the student in the general education curriculum. Under ADA and 504, these allegations and theories are not denial of FAPE claims and do not concern the provision of educational services. As the 4th Circuit explained in a similar case, "a non-student visitor [to the school] (say a friend, sibling, or other relative) could make a largely identical claim against [DOE and DHS] if it refused to permit an ABA therapist to accompany the visitor" into the school, so the "gravamen" of the complaint is not FAPE. Applying the Supreme Court's Fry test, HDRC's 504/ADA claims do not allege a denial of FAPE, so exhaustion is not required. The case is remanded on the 504/ADA claims as to whether DOE's policy of not allowing medically prescribed ABA therapy to be provided during the school day is a violation of 504/ADA.

ELIGIBILITY DISPUTES

Zayas v. New York City Dept. of Educ., 125 LRP 11659 (2d Cir. 2025) (unpublished). District court's decision is affirmed where the parents failed to establish that the proposed public school placement was not appropriate and, therefore, tuition reimbursement to the parents of the teenager with CP and seizure disorder for the student's placement at iBrain is denied. In addition, the parents' argument that the district's proposed IEP is substantively inadequate because the student's eligibility classification was changed from traumatic brain injury to multiple disabilities is rejected. This argument is unavailing because the change in the student's classification is immaterial to whether

the proposed IEP provided FAPE. The parents agreed in briefing that the disability classification determines whether a student is eligible to receive services, but that it does not determine what those services are. Thus, because there was no dispute about the student's eligibility for special education, the change in his disability classification did not impact the goals, accommodations, or special education services in the student's IEP and, therefore, had no impact on the district's offer of FAPE to the student. Accordingly, the Court agrees with the district court that the student was not denied FAPE on the grounds that his disability classification was changed.

F.C. v. Irvine Unif. Sch. Dist., 125 LRP 2497 (C.D. Cal. 2025). Seventeen year-old student with Kleine-Levin syndrome (a rare neurological condition that causes recurring bouts of excessive sleep, altered behavior, cognitive impairment, and memory loss) is not eligible for services under IDEA because he does not need special education and related services. While the court notes that the student experiences episodes where he will sleep for 20 hours a day for several weeks and wake up only to eat and use the bathroom, he did not require special education services. This is so because once an episode of excessive sleep ends and the student returns to school, he understands the curriculum, performs at grade level, and receives mostly As and Bs. The student's 504 Plan includes accommodations, such as a reduced workload and make-up classes, and will appropriately "fill any gaps" after prolonged episodes. While the parents believe that the student needs a "stop-and-start" plan under an IEP to allow him to pause and restart instruction when necessary, this would violate state law requiring a public school to complete the required curriculum for graduation within a certain number of days. Thus, the dismissal of the parents' FAPE claims by the ALJ is upheld.

G.M. v. Barnes, 124 LRP 32983 (4th Cir. 2024). District court's ruling is affirmed that second grader with diagnoses of dyslexia and ADHD who exhibits average performance in reading and math is not eligible for services under IDEA. The parents' assertion that their son is a child with SLD is rejected where the eligibility team, in accordance with Maryland law, considered whether the student exhibited a pattern of strengths and weaknesses in performance, achievement, or both relative to age and state-approved grade-level standards. The fact that the student is strong in math does not turn his reading and writing difficulties into a weakness for purposes of determining SLD eligibility. Rather, the evidence points to the fact that the student maintains average performance in reading and writing, notwithstanding the private evaluations that indicate deficiencies in reading and writing. While it is true that the student's reading and writing assessment scores dropped from the previous year, the scores remained in the average range and the student met grade-level standards while performing in the middle of this class in both areas. Thus, there is no pattern of strengths and weaknesses to support eligibility for SLD. While the court recognizes that the student's ADHD may qualify as OHI, the existence of a disability is not sufficient for eligibility under IDEA. The parents also must show that the student needs special education because of his ADHD. Given the evidence of the student's solid average performance in the general education classroom and his progression from grade to grade, however, the student does not need special education in order to receive an appropriate education.

INDEPENDENT EDUCATIONAL EVALUATIONS

Alex W. v. Poudre Sch. Dist. R-1, 94 F.4th 1176 (10th Cir. 2024). District court's ruling requiring the district to reimburse the parents for a second IEE is reversed. Under IDEA regulations, a parent is entitled to only one IEE at public expense each time the district conducts an evaluation with which the parent disagrees. If a parent requests such an IEE, a school district must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is

appropriate or ensure that an IEE is provided at public expense. Here, the district conducted a reevaluation in 2017 and reassessed the student's vision and hearing, general intelligence, cognitive and adaptive functioning, academic performance, and social and emotional abilities. Based upon the reevaluation results, the district reduced direct speech-language and OT services. The parents challenged the 2017 reevaluation results, specifically disagreeing with the conclusions concerning speech-language and OT and in February 2018, requested an IEE in those areas. The district agreed to fund the IEE and the IEP team met in April 2018 to discuss the results. In the summer of 2018, the parents continued to challenge the results of the 2017 reevaluation and requested another IEE--this time in the area of neuropsychology. The district refused, and the parents paid $5,500 for the independent neuropsychological evaluation. The district court and ALJ erred by requiring the district to pay the $5,500 because the plain text of the regulation supports the district's position. The regulations make it clear that the parents were entitled to "only one" IEE at public expense per school district evaluation. Under these circumstances, where the parents had no right to request or receive a second IEE at public expense, the district also had no obligation to respond to the request either by bearing the cost of the IEE or filing a due process complaint to show that its evaluation was appropriate.

Moonsammy v. Banks, 124 LRP 35077 (S.D.N.Y. 2024). The State Review Officer's decision denying the parents' request for an IEE at public expense is reversed. The SRO was incorrect when ruling that the parents were required to request a publicly funded IEE before the filing of their due process complaint in August 2022. Here, the parents of the six-year-old student filed a due process complaint to challenge, among other things, an evaluation conducted in March 2022 by the district and, in the due process complaint notice, requested an independent neuropsychological evaluation be funded by the district. However, the district did not respond specifically to the request, nor did it show that its evaluation was appropriate. Under IDEA, a district has two choices for responding to a request for an IEE: Either fund it or request a hearing to demonstrate the appropriateness of its own evaluation. Nothing under IDEA nor its regulations requires parents to use a particular method or format to request an IEE. Instead, IDEA requires a district to respond "without unnecessary delay" when parents disagree with an evaluation and request an IEE. The district's argument that the parents' approach in requesting the IEE in their due process complaint prevented the district from funding the IEE or defending its evaluation in a due process proceeding is rejected. Both avenues remained open to the district after the parents expressed their disagreement with the district's evaluation in their request for due process and the district could have gone ahead and decided to fund it, shown at the due process hearing that its evaluation was appropriate, or requested a separate due process hearing to do so. Thus, the SRO's decision is reversed where it denied the parents' request for a publicly funded IEE but remanded the case for further proceedings on the district's duty to reimburse the parents for private placement and whether that could include direct payment to the private school (iBrain).

PROCEDURAL VIOLATIONS AND FAPE

Boone v. Rankin Co. Pub. Sch. Dist., ___ F.4th ___, 2025 WL 1704311 (5th Cir. 2025). The district court's decision that the school district denied FAPE to the teenager with severe autism is affirmed. Not only did the district fail to individualize the student's program to address his elopement issues appropriately, the district predetermined the student's placement without sufficient opportunity for parent participation and input. Predetermination occurs when a district makes educational decisions too early in the planning process, in a way that deprives the parents of meaningful opportunity to

fully participate as equal members of the IEP team. To avoid a finding of predetermination, there must be evidence that the district has an "open mind" and "might possibly be swayed by the parents' opinions...." "Of course, '[t]he right to provide meaningful input' is not the same as 'the right to dictate an outcome.'" (citations omitted). Here, the record supports the conclusion that the district predetermined the student's placement. When the parent was informed that the student would be discharged from his current program and sent to another school, she was told by the principal that the transition would occur "right away." Further, when the parent argued that the new timeline violated a transition plan that had been previously agreed upon, a district representative responded that since the student's residence was in the other school's zone, he would go to his home middle school. "That response suggests that the School District did not have an 'open mind' about the student's placement. The district also conceded that its Director had decided that the student was to return to his home school, which was confirmed by the Principal—not the student's IEP committee. The district's argument that parents are to be consulted in determining placement but not "site selection" is rejected. While "educational placement" under IDEA does mean "educational program" rather than the particular site where the program is implemented, two things can be true at once where the district's decision to transfer the student was both a change in site and a change in placement under IDEA. Indeed, the Principal explicitly stated that the student had to be removed from the current placement because of his age and the lack of a program to meet his needs. In acknowledging that the home middle school would provide a different program for the student, the district demonstrated that it contemplated not only a change in site but also in placement. Thus, the district's argument that it proposed merely a change in site, as opposed to placement, is "meritless."

J.R.B. v. Quakertown Comm. Sch. Dist., 125 LRP 12111 (3d Cir. 2025) (unpublished). District court's ruling that the district did not deny FAPE to a kindergartner with an emotional disturbance is affirmed. While the unilateral decision by the school to modify the student's educational placement violated IDEA, it did not entitle the parent to relief. It is clear that the district procedurally violated IDEA when it moved the student from a regular education setting to a special education setting on a trial basis consisting of an emotional support classroom, conference room, a hallway inside the main office, and a room that the district calls the "serenity space." In doing so, the district failed to convene an IEP meeting to discuss the change in placement and failed to provide prior written notice of it to the parent. However, parents are only entitled to relief based upon procedural violations under IDEA when the procedural violation results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits. As the district court ruled, the record supports the hearing officer's conclusion that none of those things happened where the trial placement with 1:1 instruction and time with an emotional support teacher was relatively short. In addition, the student received services over and above those required in his IEP. Though the parent argues that the trial placement was overly restrictive, the student's aggressive behaviors continued in that setting, and there was no educational harm to the student. The trial placement also did not impede the parent's participation in the decision-making process regarding FAPE to the student. Here, the emotional support teacher provided the parent with information about the trial placement four days after it started and the district convened two IEP meetings to discuss the change. The parent also seemed to accept and approve of how the student was being instructed, and within the next couple of weeks, the parent was in communication with the teacher, expressing her concerns about the "less stimulating environments" in some messages and seemingly agreeing with the means and goals of the "trial" in others. Within three weeks, the district formally notified the parent about the trial at an IEP meeting and the parent agreed then that the "trial" could continue.

While the district did not formally notify the parent before the start of the "trial placement," the parent was not seriously deprived of her participation rights in this case.

A.B. v. McKnight, 125 LRP 2203 (D. Md. 2025). Decision of the ALJ is affirmed that the district provided FAPE to an 18 year-old gifted student with SLD. Therefore, the parents are not entitled to reimbursement for unilateral placement at the Lab School. In addition to finding that the proposed placement was appropriate, the court rejects the parents' claim that the district procedurally violated IDEA by predetermining the proposed placement. Under IDEA, districts may not predetermine a student's placement before creating an IEP and must propose a placement that aligns with the child's IEP, not the reverse. Courts have interpreted relevant case law to require districts "to come to the table with an 'open mind,'" not a "blank mind'" and "predetermination is not synonymous with preparation." "Thus, while a school system must not finalize its placement decision before an IEP meeting, it can, and should, have given some thought to that placement." [case citations omitted]. Here, the record reflects, among other things, that various written notes taken at the IEP meeting show that substantial dialogue occurred before the school-based team recommended the student's placement. The version of the minutes taken by the parent's expert indicates that the district first solicited input from the parents before confirming that the requests made at an earlier meeting had been incorporated into the IEP. District staff then offered their detailed recommendations for the IEP, including co-taught honors classes, reading intervention programming, resource courses, and elective options. When the parent's expert asked team members to explicitly connect the recommendations to the student's needs, they specifically detailed how the proposed services would address the student's academic and emotional needs. The school-based team's meeting notes reflect the same. As explained previously, impermissible predetermination under IDEA does not mean that school team members have a "blank mind." Rather, some preparation and thought as to the appropriate placement is not only permissible, but also necessary. The parents have not met their burden to show that the district impermissibly predetermined rather than properly prepared where the record reflects repeated attempts on the part of the district to involve the parents, incorporate their feedback, and listen to their concerns. The student's mother acknowledged during the hearing that the district never prevented the parents or their expert from speaking at meetings; nor did it refuse to accept the information they provided or otherwise frustrate their ability to participate in the IEP process. Thus, the court finds that the district did not engage in predetermination where the evidence reflects that the IEP was developed over a series of conversations between the parents and the school team, and the school team listened to and considered parent input at every stage. The fact that the parents ultimately disagreed with the placement determination does not mean that their feedback was not noted nor that their participation in the process was foreclosed.

AAA v. Clark Co. Sch. Dist., 124 LRP 24303 (9th Cir. 2024) (unpublished). The district court's granting of the district's motion for summary judgment on the parents' FAPE claims is upheld. Despite the district's delay in its annual review and revision of the hearing impaired student's IEP for several months and after the receipt of an independent evaluation, FAPE was provided. A procedural violation under IDEA denies FAPE only if the violation 1) impedes the child's right to FAPE; 2) significantly impedes the parents' opportunity to participate in decision-making regarding the provision of FAPE; or 3) deprives the child of educational benefit. Here, although the district concedes that it failed to conduct the annual review of the student's IEP, the child made appropriate progress in the general education setting while receiving the same services under her prior (or "expired") IEP. For example, her skills in handling and overcoming her hearing impairment and her

academic skills improved, where she earned a position on the honor roll. Thus, the parents failed to show any of the harms that would support their position that she had been denied FAPE.

IEP CONTENT ISSUES

Edward M.R. v. District of Columbia, 128 F.4th 290, 125 LRP 4880 (D.C. Cir. 2025). District court's thorough opinion is affirmed upholding the hearing officer's determinations finding the 2018 and 2019 IEPs for the middle schooler with autism and ADHD appropriate. First, the student's contention that the IEPs were inappropriate based upon the fact that some of the educational goals in them were repeated year-to-year and because he regressed and failed to make meaningful progress on those goals is rejected. Courts are to evaluate the substantive adequacy of an IEP as of the time the IEP was created rather than with the benefit of hindsight. In addition, parents must show by a preponderance of the evidence that a hearing officer was wrong in concluding that the student's IEPs were appropriate, and these parents did not do so. While the 2018 IEP repeated some of the goals from the 2017 IEP and the 2019 IEP repeated several goals from the 2018 IEP, this repetition was reasonable because the student had yet to achieve them. In addition and based upon witness testimony, the hearing officer reasonably concluded that "consistency and repetition" were "important" for the student considering his "severe memory issues." It is also important that the 2019 IEP contained a number of new goals which appear to have been "appropriately ambitious." At times, the student seems to suggest that an IEP must ensure "meaningful progress." However, "a child's 'educational outcome' isn't the measure of his IEP's sufficiency—rather, the proper measure is the reasonableness of his IEP's design." And here, "even if we consider [the student's] lack of progress as some evidence that his IEPs were not reasonably designed from the get-go, that evidence is not enough. [The student] must identify a flaw in the design of an IEP, and he has not done so." In response to the argument that the IEPs did not include "research-based instruction" in speech and language or OT, the record shows that the student received research-based instruction in speech and language and OT, even if his IEPs were silent on that. Lastly, the student claims that the school did not provide ABA as set forth in the IEP. However, this is an implementation claim and the due process complaint raised only IEP content claims. Because the implementation claim was not exhausted, we do not consider it.

THE USE OF AI AND THE PROVISION OF FAPE

William A. v. Clarksville-Montgomery Co. Sch. Sys., 127 F.4th 656, 125 LRP 3627 (6th Cir. 2025). District court's decision is affirmed upholding the ALJ's decision that the district denied FAPE to a high schooler with dyslexia for which 888 hours of tutoring from a reading interventionist trained in the Wilson Reading System was ordered. While the student graduated from high school with a 3.4 GPA, he is not able to read or even to spell his own name. That was because, per the terms of his IEPs, he relied on a host of accommodations that masked his inability to read. To write a paper, he would first dictate his topic into a document using speech-to-text software and then paste the written words into AI software like ChatGPT. The AI software would next generate a paper on that topic, which the student would paste back into his own document, and he would run the paper through another software program like Grammarly, so that it reflected an appropriate writing style. "Not all these workarounds were specifically listed in his IEP, but all were enabled by an accommodation that was: 24 extra hours to complete all assignments, which allowed William to complete his assignments at home, using whatever technology tools he could find."

OBLIGATIONS TO TRANSFER STUDENTS

Panicacci v. West Ada Sch. Dist. #2, 125 LRP 16127 (D. Idaho 2025). Judgment is entered in favor of the district on all claims where the district provided services to the interstate transfer student with autism in accordance with IDEA. When the student moved from California to Idaho, the student's IEP did not specifically require assistance from a registered behavioral technician (RBT) or BCBA. When a student with an IEP transfers to another state, IDEA requires the new district to provide services "comparable" to those in the student's previous IEP until it develops a new IEP. The district complied with this mandate by providing the student with 1,950 minutes per week of behavioral intervention services in the classroom, which is what the transfer IEP included. The parents' argument that the district violated the law by providing behavioral services through a paraprofessional instead of through an RBT or a BCBA is rejected. Neither the transfer IEP nor any other IEP developed by the previous district required the student's behavior services to be implemented by a specific individual. In addition, IDEA gives districts the discretion to select the methodology used to educate a student. Thus, absent the transfer IEP's instructions to the contrary, it was within the district's discretion to use a paraprofessional instead of an RBT or BCBA to provide the services. Because there was no evidence that the assignment of a paraprofessional to provide the services impeded the student's access to his educational program, the district did not deny FAPE. The parents' argument that the student was entitled to identical services at his new school is rejected and judgment is entered in favor of the district.

TRANSPORTATION

S.M. v. Freehold Regional High Sch. Dist. Bd. of Educ., 2025 WL 156359 (3d Cir. 2025). District court's decision that the district did not deny FAPE to the adult student with autism when it refused to send an aide into the home every morning to assist the student in getting ready for school is affirmed. The requested assistance falls outside of the district's obligation to provide appropriate special education and related services under IDEA. While the student does need help getting dressed, eating breakfast, taking medications, and getting to the school bus, IDEA does not require the district to do such things. While the district provides the student with door-to-door transportation and a 1:1 bus aide, the parents' position that the student also needs "home programming" as a related service is rejected, as their request stems from their work schedules as opposed to the student's educational needs. While the parents are correct that transportation is a "related service" under IDEA, the district satisfied that obligation by providing the student with transportation to and from school with his own aide. "But that statutory duty did not oblige Freehold to provide B.M. with an aide before he was picked up for school. No reasonable construction of Freehold's statutory duty to provide "transportation ... required to assist a child with a disability to benefit from special education," 20 U.S.C. § 1401(26)(A), could include services antecedent to picking up the student for school."

Pierre-Noel v. Bridges Pub. Charter Sch., 124 LRP 32461 (D.C. Cir. 2024). The district court's decision that the district is not required to carry the medically fragile, nonverbal, eight-year-old boy who uses a wheelchair and weighs approximately 40 pounds up and down the stairs of his non-accessible apartment building is reversed and remanded for further proceedings. The district denied the request based upon its policy that staff will only retrieve students from the outermost door of their dwelling and do not physically lift or carry students to/from their apartment door to the school bus. The term "transportation" under IDEA includes moving students from their apartment door to the vehicle that will take them to school as a related service needed to benefit from special education

services. This is broad enough to include porter services for non-ambulatory students living in inaccessible buildings, and the district's view that "transportation" is limited to using a vehicle to transport students to and from school is rejected. This student clearly needs in-home transportation to access his school-based program where a narrow interpretation of transportation would "leave some [children] unable to leave their homes and join their classmates at school." Where it is agreed that the child cannot get to the school bus without someone's help with getting him up and down the stairs of his building, he needs this service in order to receive FAPE.

J.L. v. New York City Dept. of Educ., 124 LRP 16389 (S.D.N.Y. 2024). The court adopts the report and recommendation of the magistrate judge finding that IDEA, 504, and ADA do not require a district to provide "porter services" to medically fragile children who live in inaccessible facilities. J.L.'s argument that the district is required to do so because the district's operations manual recognizes that students with disabilities may be provided with porter services is rejected. While the district may expand its services beyond those required by federal law, it is not required under ADA or IDEA that a district supply porters to lift and carry students up and down stairs within their "inaccessible" apartments or other facilities. IDEA defines transportation as travel to and from school and between schools. It can also include specialized equipment, if required to provide special transportation to a child with a disability. ADA defines "public school transportation" as transportation by school bus vehicles of school children, personnel, and equipment to and from school or school-related activities. Neither law defines transportation "so expansively to include a human being carrying a student with a disability within his building of residence." Thus, the district is not required to provide a porter to physically remove a child from or place a child into a wheelchair and physically carry him up and down stairs. Thus, the IDEA, 504, and ADA claims for such are dismissed.

FUNCTIONAL BEHAVIORAL ASSESSMENTS/BIPS

E.W. v. Department of Educ., 124 LRP 21115 (9th Cir. 2024) (unpublished). District court's ruling in favor of the Hawai'i DOE is affirmed upholding the hearing officer's decision that the student's IEP team was not required to physically incorporate the student's BIP into the IEP. There is no legal requirement under IDEA that a BIP actually be included in an IEP. Here, the IEP's supplementary aids and services included several behavioral interventions and supports, such as daily sensory supports, visual support, and priming prior to transitions, based upon the student's individual needs and parent input. These supports were not unilaterally chosen by the school for the student. Rather, the record shows that the parent participated and conveyed her input and concerns to the team. In addition and in Hawai'i, schools are required to obtain parent input when revising a BIP. Given that, the fact that the BIP was not incorporated fully into the IEP was not fatal to the parent's ability to meaningfully participate. Further, the Department provided the parent with a copy of the BIP and a BCBA explained each component of the plan with the parent. Thus, the development of a separate BIP did not impede the parent's IDEA rights.

UNILATERAL PRIVATE SCHOOL PLACEMENT/SERVICES

Khanimova v. Banks, 125 LRP 7227 (S.D.N.Y. 2025). While the district effectively conceded that its proposed 2022-23 IEP for the 5 year-old student with TBI was not appropriate when it did not put on any evidence showing appropriateness at the due process hearing, the parents were not able to show, for private school reimbursement purposes, that the private placement at iBrain met the

student's needs and was appropriate. Although the private school's plan included 60 minutes of OT, PT, and speech-language therapy per day for the student, the SRO noted that a substantial portion of the related services were not provided when the school provided only about half of those sessions due to staffing shortages. Overall, courts must determine whether a unilateral placement was providing necessary services to the student, and it was appropriate for the SRO to consider that iBrain did not provide a substantial portion of the related services mandated by its own plan, including therapy services that the student purportedly needed with consistency. Thus, the SRO did not err when affirming the IHO's decision denying reimbursement for the private placement for the 2022-23 school year and ordering the district to conduct evaluations of the student in all areas of suspected disability and to reconvene the IEP team to determine modifications needed to the student's IEP.

J.H. v. Seattle Pub. Schs., 124 LRP 21369 (W.D. Wash. 2024). Court amends its prior decision reversing the ALJ's decision that the parents' unilateral placement of their son in a residential facility was appropriate and that the district was required to reimburse the parents for the placement. Not only is the ALJ's decision reversed, but the parents must also repay $445,132 in private school costs to the district that was required to be paid to comply with the ALJ's order. Where the district in seeking review of the ALJ's order asked the court "to reverse the ALJ's award of relief," the district properly sought reimbursement for its tuition payments and was an appropriate request. Note: The district did not seek to recover the $460,000 in additional tuition payments it made pursuant to IDEA's stay-put provision.

OBLIGATIONS TO PARENTALLY PLACED PRIVATE SCHOOL STUDENTS (PPPSS)

Newport-Mesa Unif. Sch. Dist., 124 LRP 10386 (9th Cir. 2024) (unpublished). District court's decision that the parents are not entitled to reimbursement for private schooling is affirmed. Although the district did not timely conduct the student's three-year reevaluation, the delay in conducting it did not entitle the parents to relief. This is so because the parents had already decided to continue the student's unilateral private placement, which renders the procedural violation harmless. While IDEA requires a district to reevaluate students at least once every three years and the reevaluation was 40 days late, parents are only entitled to relief for procedural violations that result in educational harm or impede the parents' participation in the IEP process. Given that the parents had already paid a deposit to continue the student's private schooling, the missed deadline is harmless and did not deny FAPE to the student. In addition, the district had no obligation to develop an IEP for the student in April 2018. Following their placement of the student unilaterally in a private school, the parents did not respond to three letters that the district sent to them asking if they had any interest in an IEP for the 2018-19 school year. Thus, the district had no obligation to convene a team meeting or develop an IEP for the student.

Note: The issue of public school obligations to PPPSS is becoming an increasing concern across the country, as over thirty states now have in place some sort of publicly funded private school choice program. This will, obviously, result in a necessary increase in the need to pay close attention to the obligations to parentally placed private school students on the part of school districts, including all of the requirements under IDEA related to the determination of and expenditure of their IDEA "proportionate share" of funds for PPPSS, as well as the requirements for timely and meaningful consultation with parent and private school representatives on child find activities, proportionate share determinations, services plans, etc. See, e.g., Letter to Perla (OSERS 2019): https://www.doe.mass.edu/sped/proshare/2019-0815used-letter.pdf

SECTION 504 CHILD FIND

B.S.M. v. Upper Darby Sch. Dist., 124 LRP 17147 (3d Cir. 2024). The district court's ruling that the timely evaluation under IDEA established automatic compliance with 504 is reversed and remanded for further proceedings. Where Section 504 defines the term "disability" more broadly than IDEA, students who do not qualify for special education services under IDEA may still be entitled to services under Section 504. Here, the district evaluated the student's speech and language needs when she was in kindergarten (even though the parents asked that she receive a full psychoeducational evaluation at that time) and provided her with speech and language therapy until April of her second grade year as an SLI student. However, the IDEA evaluation did not necessarily meet the student's needs under 504 where the district did not evaluate the student's emotional needs or develop a 504 Plan to address her symptoms of depression until she was in fourth grade. As such, liability as to whether the district timely conducted a 504 evaluation will turn on whether it was reasonable not to evaluate earlier under the circumstances. There is "significant debate" about when the school was put on notice of the student's emotional struggles and whether the district should have evaluated the student earlier. The district court is directed to consider this on remand.

SERVICE ANIMALS

Dietz v. Germantown Municipal Sch. Dist., 125 LRP 12991 (W.D. Tenn. 2025). Where the seizure alert dog (Herbie) for a 9-year-old nonverbal student with multiple disabilities does not follow commands and engages in inappropriate behaviors, the district may exclude the dog from the school setting, and the court will not grant injunctive relief at this juncture while the parents' 504/ADA lawsuit proceeds. The parents are not likely to succeed on their case where the dog usually fails to respond to commands from the student and school staff and instead wanders around the classroom, gets the "zoomies," eats out of the trash can and off the floor, and chases other students. The dog's presence also results in other disruption when the student tries to harm the dog by hitting or kicking him or pulling his ears and tail when the dog fails to obey commands. On one occasion, the student repeatedly stomped on the dog's leg. Because the dog is not in the student's control, the district's exclusion of the dog does not likely violate federal law. In addition, the parents' request for "some assistance" to the student in commanding the dog at school is not reasonable and is well beyond "some assistance." Importantly, school staff have devoted "much time and attention" to assisting the student, but it has not been successful in controlling the dog. In balancing the equities, "Herbie's exclusion does not harm the Plaintiffs. But the harm to Germantown and other students is substantial. When Herbie attended Dogwood, he was disruptive. He would get the zoomies in the classroom, sniff people, and eat food not meant for him. (record citations omitted). And so allowing Herbie in the classroom places additional responsibilities on school staff. (record citation omitted). And, likewise, Herbie detracts from Germantown's ability to educate and tend to M.D. and the other students." [Interesting note: The court also mentioned that it would not, at this juncture, determine whether the ADA's regulations on service animals are valid under the Supreme Court's 2024 decision in Loper Bright since the parties have not yet challenged those regulations. It is also noted that the parents have filed an appeal of the court's decision to the Sixth Circuit Court of Appeals].

Kimball Area Pub. Schs. v. I.M., 125 LRP 10171 (D. Minn. 2025). The district's proposed IEP that does not include services of a handler for the student's service dog and proposes a full day (rather than a half day) for the student is appropriate and offers FAPE. While the student's trained service dog is helpful in interrupting and redirecting inappropriate behaviors and sometimes calms the student, there is no evidence that the dog is necessary for the student to receive FAPE, particularly

where the dog is only sometimes useful in reducing inappropriate behaviors and keeping the student in one place. The district can address the student's behavioral needs through the proposed IEP's positive interventions and redirection by school staff working with him. Because the district's proposed IEP includes interventions and paraprofessional support which are equally if not more effective than the service dog, the IEP offers FAPE. Thus, the due process decision of the ALJ finding the dog necessary for FAPE under IDEA is reversed. Since the IEP is appropriate and offers FAPE, the court need not address whether the district is required to provide staff to serve as the handler for the dog. [Note: The court also ruled that the IEP's proposal for a full day (rather than a half day to accommodate private ABA services is appropriate for the student. The court's decision has been appealed by the parent to the Eighth Circuit Court of Appeals].